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January 13, 1994

BY OVERNIGHT MAIL

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: CC Docket No. 93-292

Dear Mr. Caton:

Enclosed for filing please find an original plus nine (9) copies of the Comments of Rochester Telephone Corporation in the above-docketed proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed self-addressed envelope.

Very truly yours,

Michael J. Shortley, III

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )

Policies and Rules Concerning )  
Toll Fraud )

CC Docket No. 93-292

COMMENTS OF ROCHESTER  
TELEPHONE CORPORATION

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January 13, 1994

(2846K)

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### Summary

Rochester submits these comments in response to the Commission's Notice initiating this proceeding. The Commission proposes to identify new ways in which it may assist in combatting toll fraud. It also solicits comment regarding whether it should alter the traditional rules allocating liability for toll fraud among customers, carriers and equipment providers and whether it should require carriers and equipment providers to take other affirmative steps to detect and prevent toll fraud. The Commission has identified five areas of concern -- CPE-based fraud, network-based fraud, payphone fraud, cellular fraud and LIDB fraud.

Although each area is discussed in these comments, the Commission should bear two principles in mind. First, customers or equipment users generally are in a better position to detect and control fraud than are either carriers or equipment providers. Thus, the Commission should not adopt its proposals to apportion liability for CPE-based fraud among CPE owners, carriers and equipment providers. Second, because fraud is a costly problem for customers, carriers and equipment providers alike, all market participants already have every

incentive to take steps to minimize its occurrence. The Commission can and should take all appropriate steps to minimize fraud and to assist in the prosecution of those responsible. The Commission, however, should not require exchange or interexchange carriers to offer additional, specific services beyond those already mandated. To the extent that customers want additional anti-fraud services, carriers already have market-driven incentives to offer those services. Thus, additional Commission mandates are unnecessary.

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CC Docket No. 93-292

COMMENTS OF ROCHESTER  
TELEPHONE CORPORATION

Introduction

Rochester Telephone Corporation ("Rochester")<sup>1/</sup> submits these comments in response to the Commission's Notice initiating this proceeding.<sup>2/</sup> The Commission proposes to identify new ways in which it may assist in combatting toll fraud. It also solicits comment regarding whether it should alter the traditional rules allocating liability for toll fraud among customers, carriers and equipment providers and whether it should require carriers and equipment providers to take

<sup>1/</sup> Rochester and its affiliated companies participate in the exchange, interexchange, cellular and communications equipment businesses. Thus, the issues raised in the Notice affect virtually all aspects of Rochester's operations.

<sup>2/</sup> Policies and Rules Concerning Toll Fraud, CC Dkt. 93-292, Notice of Proposed Rulemaking, FCC 93-496 (released Dec. 3, 1993) ("Notice").

other affirmative steps to detect and prevent toll fraud.<sup>3/</sup> The Commission has identified five areas of concern -- customer premises based ("CPE")-based fraud, network-based fraud, payphone fraud, cellular fraud and Line Information Data Base ("LIDB") fraud.<sup>4/</sup>

Although each area is discussed in these comments, the Commission should bear two principles in mind. First, customers or equipment users generally are in a better position to detect and control fraud than are either carriers or equipment providers. Thus, the Commission should not adopt its proposals to apportion liability for CPE-based fraud among CPE owners, carriers and equipment providers.<sup>5/</sup> Second, because fraud is a costly problem for customers, carriers and equipment providers alike, all market participants already have every incentive to take steps to minimize its occurrence. The Commission can and should take all appropriate steps to minimize fraud and to assist in the prosecution of those responsible. The Commission, however, should not require exchange or interexchange carriers to offer additional, specific services<sup>6/</sup> beyond those already mandated. To the extent that customers want additional anti-fraud services,

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<sup>3/</sup> Id., ¶ 10.

<sup>4/</sup> Id., ¶¶ 24, 26, 31, 34, 36.

<sup>5/</sup> Id., ¶ 25.

<sup>6/</sup> See id., ¶ 26.

carriers already have market-driven incentives to offer those services. Thus, additional Commission mandates are unnecessary.

Discussion

1. CPE-Based Fraud. The Commission requests comment on whether it should impose a duty to warn of the possibilities of toll fraud and whether to apportion liability among carriers, equipment providers and customers for CPE-based toll fraud.<sup>1/</sup> The Commission's first proposal is not objectionable; the second proposal is. Rochester agrees that it should work -- and has worked -- with all of its customers -- exchange, interexchange, cellular and equipment -- to reduce the incidence of toll fraud. It is willing to provide warnings and education regarding the possibility of toll fraud.

However, to impose a greater level of responsibility would seriously dilute incentives to control CPE-based toll fraud. Rotelcom -- Rochester's equipment subsidiary -- does not manufacture equipment; it is a distributor. As a result, it is necessarily dependent upon the manufacturers of the equipment that it distributes for toll fraud security features. It has no control over the features that manufactures provide. Thus, if the Commission is to amend

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<sup>1/</sup> Id., ¶ 24.



its Part 68 registration requirements to include a duty to warn, it should assign that duty -- i.e., providing instructions and the like -- on manufacturers in the first instance. Distributors, at best, should only secondarily be responsible, and that duty should be limited to training customers in accordance with the manufacturers' instructions.<sup>8/</sup>

Rochester's exchange and interexchange operations also do not object to a duty to warn or to clarifying their tariffs to include such warnings. The Commission, however, should prescribe the precise tariff language that it wishes carriers to utilize. Otherwise, it would leave carriers in the untenable position of guaranteeing their customers against the consequences of toll fraud. Subjecting carriers to the vagaries of the complaint process and litigation concerning the precise contours of tariff language would do nothing to increase incentives to prevent toll fraud.

The Commission, however, should not adopt rules imposing any obligation in addition to a duty to warn. Adopting

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<sup>8/</sup> The Commission also requests comment on whether any duty to warn should be applied only to newly-manufactured equipment or to existing equipment as well. Id., ¶ 40. The Commission should limit any such duty to newly-manufactured equipment. Today, customers own and operate CPE that is no longer manufactured or even supported by the manufacturers. To require manufacturers and distributors to comply with a duty to warn with respect to such equipment would likely cost more than any benefits that could be obtained thereby.

regulations apportioning liability among customers, equipment suppliers and carriers would seriously dilute incentives to control toll fraud. CPE users control access to their equipment; carriers and equipment suppliers do not. Carriers and equipment suppliers also have no control over how a customer utilizes its CPE. For example, the use of a feature that is susceptible to toll fraud, but which customers find useful -- remote access to a private branch exchange ("PBX")<sup>9/</sup> -- is entirely within the control of the customer. The PBX user decides which of its employees have access to the feature, assigns security codes and the like. Other than warning customers of the possibility of toll fraud abuse, carriers and equipment suppliers have no ability to control customers' uses of the equipment that they acquire. Thus, a blanket rule apportioning liability would be inappropriate. Rather than adopting such a rule, the Commission should confirm that the analysis set forth in Chartways<sup>10/</sup> is the appropriate test for assigning responsibility for CPE-based toll fraud.

2. Network-Based Fraud. In discussing network-based fraud, the Commission requests comment on whether it should require carriers to offer certain anti-fraud services, such as

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<sup>9/</sup> Id., ¶ 8.

<sup>10/</sup> Chartways Technologies, Inc. v. AT&T Communications, File No. E-88-72, Memorandum Opinion and Order, 8 FCC Rcd. 5601 (1993).

those currently offered by certain interexchange carriers.<sup>11/</sup> There is no reason for the Commission to mandate the offering of any particular anti-fraud services. Carriers vary enormously in their size, financial resources and abilities to offer specific features and services. In addition, interexchange carriers may target specific markets and customer audiences where the potential for fraud may vary widely. Some carriers may target residential customers where the fraud potential is relatively low, while others may target high-volume businesses that will demand such service offerings. To the extent that demand truly exists for additional anti-fraud offerings, the Commission may rely upon market forces to ensure their availability to satisfy the demand from those customers that find such services attractive. However, mandating the offering of such services could force many carriers to expend valuable resources to offer services that their customers neither need nor want. Such an approach would serve no valid public policy objective.

3. Payphone Fraud. Payphone fraud -- especially from customer-owned equipment ("COCOTs") -- presents somewhat unique circumstances. On the one hand, COCOT providers cannot police -- at all times -- the users of their equipment. On the other

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<sup>11/</sup> Notice, ¶ 26.

hand, however, the Commission has required exchange carriers to offer services -- such as international direct-dialed blocking ("IDDB") -- to combat payphone fraud.<sup>12/</sup> The Commission has also recognized that exchange carriers currently offer other services -- such as originating line screening ("OLS") and billed number screening ("BNS") -- that serve the same purpose.<sup>13/</sup> The Commission should conclude that the steps it has taken to date are adequate to protect COCOT providers from fraud. These services permit COCOT providers to reduce, if not eliminate, most forms of payphone fraud. The availability of these services should be a sufficient defense for carriers against charges that they are responsible for payphone fraud.

Moreover, COCOT providers must take some responsibility for actions that carriers cannot control, such as subscribing to the services described above, validating calling card calls and the like.

The Commission should not adopt the Florida model as a nationwide solution to payphone fraud.<sup>14/</sup> The Florida model essentially assigns responsibility for certain types of payphone fraud (10XXX, 950 or 1-800 dialing) to exchange and

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<sup>12/</sup> Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Dkt. 91-35, Order on Reconsideration and Further Notice of Proposed Rulemaking, 8 FCC Rcd. 2863, 2865 (1993).

<sup>13/</sup> Id., 8 FCC Rcd. at 2867.

<sup>14/</sup> Notice, ¶ 31.

interexchange carriers if the COCOT owner has subscribed to certain of the services described above.<sup>15/</sup>

While this result may be appropriate in particular circumstances, it is not appropriate as a general rule. The rule could likely require carriers to become the guarantors against toll fraud committed from payphones. Such a guarantee would be inappropriate, for example, where the services are not utilized correctly -- e.g., an operator services provider that serves a particular payphone chooses to ignore the screening capabilities and the like. Rather than establish a presumption, the Commission should treat complaints of payphone fraud on a case-by-case basis as it did, for example, in United Artists.<sup>16/</sup>

Of particular importance, the Commission should not adopt regulations that have the effect of nullifying limitation of liability provisions found in the tariffs of virtually every common carrier<sup>17/</sup> -- which essentially limit the liability of

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<sup>15/</sup> Id., ¶ 27 n.42.

<sup>16/</sup> United Artists Payphone Corp. v. New York Telephone Co., File No. E-90-181, Memorandum Opinion and Order, 8 FCC Rcd. 5563 (1993).

Although Rochester does not agree with the disposition of United Artists, the case-by-case approach at least preserves to carriers the opportunity to defend against such claims on the basis of the individualized facts and circumstances presented.

<sup>17/</sup> See Notice, ¶ 39.

the affected carrier to a refund of the amount paid for the service subscribed to when it did not work. In the absence of gross negligence or willful misconduct, the Supreme Court has upheld the reasonableness of such provisions in common carrier tariffs.<sup>18/</sup>

To eliminate such protections would effectively turn common carriers into insurers. This would have the perverse result of reducing the effectiveness of efforts to curb toll fraud. Exchange carriers would be forced to increase their prices for services such as OLS, BNS and IDDD to compensate for the increased risk of assuming the role of insurers. The net result would be to discourage customers from purchasing such services, thereby increasing the incidence of toll fraud.

The Commission should, therefore, continue to evaluate cases of payphone fraud on a case-by-case basis without the Florida presumption and to continue to recognize the validity of limitation of liability provisions universally found in common carrier tariffs.

4. Cellular Fraud. Unlike many other types of fraud, neither carriers nor customers truly control access to the

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<sup>18/</sup> Western Union Telegraph Co. v. Esteve Brothers & Co., 256 U.S. 566 (1921).

instrument to commit the fraud, as the Commission recognizes.<sup>19/</sup> As such, any solution to this problem most likely will be equipment-based.<sup>20/</sup> The Commission has already proposed rules in this area.<sup>21/</sup> RTMC suggests that the Commission encourage industry standards committees to address the issue of whether additional equipment-based safeguards are appropriate or, indeed, feasible.

5. LIDB Fraud. Rochester does not own a LIDB. Rather, it contracts with LIDB providers to perform the query and screening functions on its behalf. Nonetheless, it believes that the safeguards the Commission adopted in its LIDB

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<sup>19/</sup> See Notice, ¶ 33.

<sup>20/</sup> The Commission also requests comment regarding whether the existing rules provide adequate incentives to curb cellular fraud. Id., ¶ 34. Rochester Telephone Mobile Communications ("RTMC") -- Rochester's principal cellular affiliate -- believes that they do. When customers report fraudulent uses of their cellular phones or numbers, RTMC will typically write those charges off. This practice -- which is required as a matter of customer service -- provides RTMC with a powerful incentive to detect and minimize fraud. However, assigning responsibility for fraud solely to cellular carriers will eliminate incentives customers currently possess to detect and prevent cellular fraud. For example, customers are motivated to report theft or fraudulent use to ensure that they will not be held liable for fraudulent use of their cellular telephones or numbers.

<sup>21/</sup> Id., ¶ 34.

Investigation<sup>22/</sup> -- including the requirement that affected exchange carriers specify in their LIDB tariffs the updating and anti-fraud procedures that they utilize -- should be sufficient to address LIDB fraud.

Conclusion

For the foregoing reasons, the Commission should address the proposals contained in the Notice in the manner suggested herein.

Respectfully submitted,

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<sup>22/</sup> Local Exchange Carrier Line Information Database, CC Dkt. 92-24, Order, 8 FCC Rcd. 7130 (1993).